Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

MARY F. BELL,
PETITIONER

v.

JOHN E. POTTER, Postmaster General
of the United States Postal Service,

On Petition for a Writ of Certiorari to the
United States court of Appeals for the
Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the District Court misconstrue the requirements of Rule 56 at the summary judgment stage and erroneously grant the respondent's motion for summary judgment motion, as a matter of law?

2. Did the District Court and the Court of Appeals disregard facts in petitioner's Second-Amended Complaint; the similar situated EAS employees; comparative evidence of how the supervisor's request was treated differently?

3. Did the District Court and the Court of Appeals disregard sworn testimony from disinterested witnesses that cast doubt on the Respondent's "alleged" nondiscriminatory and retaliatory reasons?

4. Did the District Court fail to afford the Petitioner the requirement, of a full and fair opportunity to demonstrate pretext, under the framework of *McDonnell Douglas* and fail to draw all reasonable inferences in the petitioner's favor?

PARTIES TO PROCEEDING

The caption of the case includes all parties to the proceeding in the district court and court of appeals.

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PETITIONER FOR A WRIT OF CERTIORARI

Petitioner, Mary F. Bell, respectfully petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals of the (App. A). The Opinions of the District court (App. B).

JURISDICTION

The judgment of the Court of Appeals was entered on November 21, 2002. The Court of Appeals had jurisdiction to review the final decision of the district court under 28 U. S. C. section 1291. This Court has jurisdiction over this petition under 28 U.S.C. section 1254 (1).

STATUTORY PROVISIONS INVOLVED

Relevant provisions of Title VII, the Civil Rights Act of 1964, the amendment of 1991 for section 1981a (a)(1), is on pages 5 & 6.

STATEMENT OF THE CASE

Based on the claim filed with the Postal Service Equal Employment Opportunity (EEO) by Mary F. Bell, she brought this action against respondent in the United States District Court for the District of Northern Illinois, on January 12, 2000. She was alleging that the respondent had engaged in unlawful employment practices against her because of her race, color and gender, and had retaliated against her because of her previous protected activity and alleged the discrimination and retaliation was ongoing.

The respondent filed a motion for summary judgment in April 2001. The petitioner responded to the motion and added statements to her Rule 12N and a 206 pages of exhibits. July 2001 the respondent filed another motion, a motion to strike the petitioner's response, alone with his reply response to the summary judgment motion. The petitioner filed a response to the motion to strike and attached (in revelent parts) sworn testimony of Debbie Dainty, of Harry Morris and Tina Harvey in her responses.

December 19, 2001 the District Court granted the Respondent's motion to strike and at the same time granted the respondent's motion for summary judgment.

The Petitioner, pro se, was responding to each of the motions and cited sworn testimony from witnesses and evidence, documents received from the Respondent and from previous EEO cases, with the same Respondent. At no time did the district court allow the petitioner an opportunity to correct the minor deficiencies, her options were limited at this

point, because she was unaware of any deficiencies. The petitioner believed the District Court would review all the evidence in the record as a whole. The District Court, instead said "the court recognize some of these deficiencies could be easily cured and would normally be inclined to give the responsible party a chance to do just that, but not in this case."(page # 3 of the opinion) Also "Because Bell has already been given one chance to fix her statements of facts, but chose not, the court will not give her another, especially when she has expressed no willingness to do so." (page # 4 of the Opinion) Petitioner believes the conclusion conflicts settled case law precedent. See *Anderson v. Liberty Lobby Inc.*, 477 U. S. 242, 248, 251, 106 S. Ct. 2505, 2510-11 (1986)

More importantly, the District Court stated in its footnote # 3, on page 5 of the Opinion "Nevertheless, the court will still consider Bell's brief in response to the motion to strike, if only to glean her legal arguments." When gleaning the petitioner's legal arguments, the facts in the response (sworn testimony, statical evidence, 7 white employees request approved) and her Seconded-Amended Complaint, the District Court should not have granted the summary judgment motion as a matter of law. *Celotex Corp. v. Catrett*, U.S. 317, 322-23 (1986)

The petitioner in her Second-Amended Complaint alleged the Respondent treated the White EAS (supervisory) employees request for a *noncompetitive lateral reassignment* more favorably, approving theirs and denying hers, forcing her to compete with lower-level employees, who could not receive noncompetitive consideration.

After discovery the evidence and the sworn testimony of disinterested witnesses, revealed the

Respondent repeatedly denied the Petitioner *noncompetitive lateral reassignments* and required her to compete for the *same grade level* (EAS-16) positions with lower level employees and did not require the White supervisors, both males and females when they made the same request. The Respondent approved the White supervisor's request before, during and after the Petitioner contacted the EEO office, after she filed a complaint and after she filed this lawsuit. (petitioner's appeals, exhibit # 2)

The District Court's conclusion conflict with this Court's settled case law precedent and the conflict with case law of the Seventh Circuit and other Circuits. *Anderson v. Liberty, Inc.*, 477 U. S. 242, 248 (1986) (quoting the Seventh Circuit and the Supreme Court) "Accordingly, we will affirm the decision of the district court only if, had the record before that court been the record of a complete trial, the defendant would have been entitled to a directed verdict." *Billish v. City of Chicago*, 989F. 2d 890, 892 (7th Cir. 1993), *Anderson v. Liberty Lobby, Inc.*, 477 U. S. 242, 248, 251 106 S. Ct. 2505, 2510-11 (1986); *Karazanos v. Navistar International Transportation Corp.*, F. 2d 332, 335 (7th Cir. 1991)

The Court of Appeals in settled case laws have stated "We review the grant or denial of a motion for summary judgment de novo. *Patrick v. Jasper County*, 901 F. 2d 561, 564- 65 (7th Cir. 1990). On review, we view all evidence in the light most favorable to the party opposing summary judgment." *Adickes v. S.H. Kress & Co.*, 398 U. S. 144, 158 - 59 (1970)

The Court of Appeals stated "the postal service does not argue on appeal that Bell failed to establish a prima facie case, so we focus on whether Bell demonstrated a material dispute about the legitimacy

of the reasons given for rejecting her applications." (Court of Appeals, page # 3)

Petitioner provided sufficient evidence that cast doubt on the stated reasons for her rejection.
The Postal Service policy for EAS (executive administrative scale) employees, EL- 311 section 536 through section 537, and the regulations all EAS employees follow when applying for EAS positions.

EAS employees can apply *noncompetitively* for a position at the same grade or same position (same position in a different facility or different title, same grade in a different facility) all the way up to selection of the position. Calloway testified "We are allowed to post and accept lateral on the posting all the way up until the time of the selection, or we cannot post and select lateral transfer requests. (Calloway's deposition, page 88 lines 4, 5, 6 and 7)

This a privilege of employment for EAS employees. Employees can simply write a letter to the office with the vacancy and make the request. If the vacancy is posted the EAS employee can attach a p.s. form 991, pages 1 and 2, (application for promotion or assignment) and forward it to the vacancy office, before the closing date of the position. EL-311 section 536.3 Noncompetitive Selection for an Announced Vacancies. McMahon and Calloway testified that they were aware of these policies. (McMahon's deposition, page #53, line 23) (Calloway's deposition, page #5, lines 17, 18, 19, 20 and 21)

The provisions of section 703 (a)(1) of Title VII of the Civil Rights Act of 1964, 42 U. S. C. 2000e-2 (a) (1) provides in relevant part: It shall be an unlawful employment practice for an employer to discharge

any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race.

The District Court stated "And, once again, Bell cannot rebut as pretextual Calloway's stated policy of requiring a competitive application before considering a noncompetitive lateral request transfer.
Calloway's affidavit and sworn testimony reveals he's approved noncompetitive lateral reassignments for White supervisory employees and with an application and without an application. (Calloway's affidavit, pages 2 and 3,) Calloway approved a noncompetitive lateral transfer, a noncompetitive downgrade and a noncompetitive saved-grade *without* a "competitive application", for the Hughes, (October 1997), for Zyvert (March 1998) and Nalewanski, (November 1998) (petitioner's response brief, that was before the District Court, August 1, 2001, page 2) (petitioner's appeals brief, exhibits #4, #5 and #6)

The District Court stated " Calloway has consistly requested employees to apply competitively." The record reveals Calloway *only* made the Petitioner apply competitively and she's the *only one* he's denied. In fact, there were four (4) White Supervisors who made a request for noncompetitive lateral reassignments and Calloway went above and beyond to ensure their request was approved and each of them were approved. (Petitioner's response brief, page2) (Petitioner's appeals brief, page 5)

Petitioner testified "He didn't tell them that. He just gave it to them. No, I am making he same request, EAS-16 noncompetitive request for a noncompetitive position. He denied me and the two white employees

he approved. (Bell's deposition, page 78, lines 4, 5, 7, 8, and 9) (Petitioner's appellant brief, page # 5)

Calloway stated in his affidavit that his May 14, 1998 letter he wrote "I also suggested that if a position became available that she should consider putting in for it competitively as well, as laterals are not a guarantee. (Calloway's affidavit, page 1, lines 10, 11 and 12)

McMahon's reasons for denying the Petitioner one of two EAS-16 positions in his letter, dated November 17, 1997, was "apply competitively if you want to be considered". Petitioner argued this reason is a pretext for discrimination and retaliation and a smokescreen, because she provided a timely letter and a noncompetitive application for an announced vacancy (postal regulations, EL-311 section 536.31) and wanted to be considered when she applied noncompetitively, before the closing of the announcement.

McMahon lied in his affidavit that the petitioner did not apply for the positions. McMahon had in his possession before the closing date of the positions, petitioner's letter and application for the announced vacancy. (postal regulations, EL-311 section 536.31) (Second-Amended Complaint, exhibit # 18)

McMahon stated in his affidavit that "the Complainant did not apply for the position. And Complainant had the opportunity to apply for these positions. She failed to apply. That was her choice and the reasons are her own. I do question why she didn't apply. (McMahon's affidavit page 1 lines 10, 12, 13, 14 and 15) (Petitioner's appeals brief, page 3) McMahon testified that his EEO affidavit, page 1 line 10, stated " the complainant did not apply for the

position." (McMahon's deposition, page # 45 line 23, page 47, lines 3, 4 and 5, page 50, lines 5, 6, 7, 8 and 9) (Petitioner's appeals brief, page 3)

McMahon's letter is also pretextual for the following reasons: 1) He wrote it after the closing date of the vacancy, the application clearly states applications must be received before the closing date. 2) He wasn't the selecting official and he testified that he was not the selecting official and he didn't forward it to the selecting official. (McMahon's deposition page # 54, lines 17, 19 and 20). 3) His suggested "apply competitively" meaning complete the "KSA's". (McMahon's deposition, page 39, lines 3, 4, 5, 6 and 7) He testified "KSA's" are *not* required for supervisors. (McMahon's deposition, 38, line 23 and page 43, line 9 and page 44, line 10) This was the pretext for discrimination and retaliation, because he knew the petitioner did not have to apply "competitively" as "KSA's" are not required for supervisors. McMahon knew his letter was *after* the closing date of the announcement.
4) McMahon testified that he knew the Petitioner was a Supervisor Distribution Operations at the time of vacancy, (vacancy announcement 97 - 073, was for Supervisor Distribution Operations) (McMahon's deposition, page 55, line 16 and page 56, line 6) (petitioner's appeals brief, page 11)

The petitioner applied for the two EAS-16 positions following Postal regulations, EL-311 section 536.3 and 536.31 (Selection for an Announced Vacancy) (a letter and a noncompetitive application)(Petitioner's appeals brief, page 2) McMahon testified that he was aware of the Postal regulations El-311 section 536 through 537, Noncompetitive Procedures. (McMahon's deposition, page 53 line 23) McMahon testified the Petitioner's letter and application

was for noncompetitive consideration. (McMahon's deposition, page # 42, line 16, page # 46, line 21 and 48, line 8) (Petitioner's appeals brief, page 2)

During McMahon's deposition he was asked, Question: Mr. McMahon what did you do with the plaintiff's application? Answer: I put it on file. (McMahon's deposition, page # 54, line 15)(petitioner's appeals brief, page 11)
McMahon concealed the petitioner's letter and application for the posted vacancies from the Selecting Official and the Advisory Panel and stated "she did not apply for the position, the reasons are her own. I do wonder why she didn't apply." knowing that was a lie. Petitioner's p.s. form 991, application for promotion or assignment, was dated November 13, 1997.

The Court of Appeal stated "she was rejected twice by the plant manager because he never hires noncompetitive applicants and once by the Rockford postmaster because no positions were available when Bell applied. (Court of Appeals,page 3)

Two of the seven worked in McMahon's area of responsibility, Mike Donahue and Greg Dole. These employees graduated in November of 1998. McMahon approved their transfers to his office. (Appellant's exhibit # 6, the Northern IL. District manager, Kathy Kulig confirms the fact that the first group graduated in November 1998) Witness, Debbie Dainty testified that they had four (4) ASP, Associated Supervisor Program, employees in the processing and distribution center, now there was (2) two. (Dainty's deposition, page # 20, lines 20, 21 and 22) (Petitioner's response brief the district court considered at the time of the December 19, 2001 Opinion) (Petitioner's appeals brief #7)

All supervisors of distribution operation are under McMahon's area of responsibility as plant manager. Ms. Dainty testified another supervisor; Tom Stephenson transferred in as a Supervisor. (Dainty's deposition, page # 20, lines 10 and 12) A witness's sworn testimony, that three EAS supervisors (all males, two white and one black) received noncompetitive laterals in the Rockford Processing and Distribution Center and worked under McMahon, alone case doubts on his honest held belief and cast doubt on his statement that he does not hire noncompetitive applicants. (petitioner's response brief, with Dainty's testimony attached was before the District Court)

At this stage of the proceedings, those fact disputes apparent in the record were sufficient to preclude summary judgment. See id; see also *Ryther v. Kare* 11, 108 F. 3d 832, 837 (8th Cir.) (*en banc)* (stating that the elements of the prima facie case of discrimination combined with evidence of pretext may permit a jury to find for the plaintiff), *cert. denied,* 117 S. Ct. 2510 (1997) see *St. Mary's Honor Center v. Hicks,* 113 S. Ct. 2724, 2749 (1993); *Ayala v. Mayfair Molded Products Corp.*, 831 F. 2d 1314, 1318 (7th Cir. 1987)

Calloway's reason for not approving the petitioner's noncompetitive lateral reassignment. The Court of Appeals stated "because no positions were available when Bell applied." (Court of Appeals Order, page 3)
Mr. Calloway's testified in his deposition, "there were no positions posted or vacant to be posted". Calloway's deposition, page # 91 lines 21 and 22) knowing that to be a false. (petitioner's appeals brief page # 5 and plaintiff's exhibit # 7, page 2) (petitioner's response brief to the motion to strike, which the District Court said, it considered)

Witness, Harry Morris, testified that he transferred and he talked to Mr. Calloway prior to leaving the Rockford facility. (Morris's deposition page, 6 line 18 and page 8 line 12 and 14 through 23)

That fact cast doubt on his statement that there were no vacant positions. The word *"vacant"* means "not filled or occupied by an incumbent or possessor." Webster's Third New International Dictionary 2527 (1976). In the context of a workplace, a vacant position is a position in which no employee currently works and to which no individual has a legal entitlement. In the Postal Service, EAS (supervisory) employees do not have a seniority system as craft employees, therefore, when Morris ceased working in the Rockford facility, May 8, 1998, his position was vacant until a replacement was hired. Calloway denied the petitioner the EAS -16, Supervisor Customer Service position on May 14, 1998, knowing, Morris had left already (because Morris testified he talked with him prior to leaving) and lied about the position being vacant. Calloway used the letter to discourage the petitioner and as a pretext for discriminate and retaliate. Two weeks later, May 27, 1998 Calloway posted the same, EAS-16 position and awarded it to a craft employee, a White male, a part-time flexible employee with only two years of service. (petitioner's appeals reply brief, exhibit #2)
Supervisor Distribution Operations, petitioner's title, and a Supervisor Customer Service have the *same* job requirements and are the same EAS-16 level. (petitioner's appeals reply brief, exhibit # 1)
Calloway had in his possession, the Petitioner's letter and p.s. form 991, application, a complete *noncompetitive* request. (postal service regulations EL-311 section 536. 1 (noncompetitive procedures, priority consideration.) and section 536.31 (noncompetitive selection for an announced vacancy)

Calloway testified that he was aware of these procedures. (Calloway's deposition, page 5, lines 17, 18, 19, 20 and 21)

May 14, 1998, the date of his letter, Calloway had approved the same noncompetitive request for each of the following White employees before the petitioner's request, Dunlap, (September 1997) Goodman-Hughes (October 1997), and Zyvert (March 1998). Calloway continued to approve White employee's request, November 1998 he approved Nalewanski's after he denied petitioner, November 1998.

A copy of Morris's check stub reveals his last workday in the Rockford facility was May 8th 1998. He started his new position on May 9th 1998. (Plaintiff's app. exhibit # 89, 90 and 91, which was before the District Court)

Calloway testified that "Initially everyone that I receive, I send them notification that I have their letter requesting but that they should also put in for it competitively because laterals are not an automatic guarantee." (Calloway's deposition, page # 6 lines, 3, 4, 5 and 6) Mr. Calloway never sent any of the White EAS employees a letter to apply competitively, only the Appellant. (Bell's deposition, page # 78, lines 4 and 5 and lines 7, 8 and 9) The record reveals Calloway approved four (4) White employees request two noncompetitive, lateral reassignments, a downgrade and a noncompetitive save-grade. Calloway never asked them to apply competitively and this constitute disparate treatment of similar situated employees, and that petitioner have more than adequately made out a prima facie case of discrimination under Title VII.

The Postal Service does not argue on appeal that Bell failed to establish a prima facie case, so we focus on whether Bell demonstrated a material dispute about the legitimacy of the reasons given for rejecting her applications. (Court of Appeals, page #3) see 970 F. 2d 487, 491, and n. 7 (CA 8 1992); *Burdine,* 450 U.S., at 253, 254, n. 7.

Morris testified that he talked to Calloway about his transfer in May 1998. (Morris deposition, page # 8, lines 12, and 14 through 23) Morris worked under Calloway's area of responsibility as Supervisor Customer Service. During his deposition he was asked Question- Transfer, Could you tell me the effective date of your transfer? Answer- I am not sure exactly what day to the letter. It was somewhere - I want to say late May. Question- Late May? Answer- Right. Somewhere between perhaps the 15th through the 30th, somewhere in there. We are talking over - that's going on three years now, and I don't have any paperwork on hand to state exactly when that transfer was effective. (Morris deposition, page 6, lines 22 and 23, page 7, lines 1, 2, 3, 4, 5, 6, 7 and 8)
(Plaintiff's response brief, page # 5 and also appellant's brief, number 7)

The record reveals Calloway had granted four (4) EAS White employees either a noncompetitive lateral reassignment, a noncompetitive down-grade, or a noncompetitive saved-grade, before, during and after the petitioner made her request. (Dunlap, Goodman-Hughes Zyvert and Nalewanski) (two white males and two white females) (petitioner's appellant brief, exhibit # 3, 5, and 6)

Postal regulations EL-311 sections 532.51, 533.53, 544.111 states in revelent parts: Lower-grade, present or former supervisors who filed application in

accordance with 532.5 must be considered by the Advisory Panel ahead of other candidates. The respondent awarded Dunlap an EAS -20 Manager, Customer Service position, noncompetitively, because he was an EAS-20, Manager, Customer Service already. The petitioner was requesting the same privlevious of employment when she applied for the EAS-16, Supervisor Distribution Operations position, noncompetitively, because she was an EAS-16, Supervisor Distribution Operations at the time of the vacancy. McMahon testified that he knew the Petitioner was a Supervisor Distribution Operations at the time of the vacancy.

One means of demonstrating pretext is to put forth evidence that employees outside the protected class who were involved in misconduct, (in this case requesting a noncompetitive lateral reassignment), of comparable seriousness were not subject to similar adverse employment action. See *Hiatt v. Rockwell Int'l Corp.*, 26 F. 3d 761, 770 (7th Cir. 1994)

REASONS FOR GRANTING THE PETITION

The petitioner, pro se, believes the District Court's conclusion and granting the Respondent's motion for summary judgment conflicts with what this Court have stated in settled case law precedent. The District Court excluded critical evidence before it, the petitioner's Second-Amended Complaint and her response brief, which it stated it would consider. The fact that she made a prima facie case of discrimination and retaliation, Respondent made false statements, sworn testimony from that proves the Respondent's nondiscriminatory and nonretaliatory reasons are false. The District Court also had before it comparative evidence showing that employees similarly situated to the petitioner, all White, males and females who received better treatment, when they made the same noncompetitive request.

Respondent approved their request, never told them to "apply competitively", never required them to be interviewed with compete with lower-level employees and understanding when they wanted to end their commute, driving 1 to 3 hours per day, 140 miles round trip, wanting to be close to home and wanting to work day-time hours. Petitioner and Hughes both worked in the Palatine Processing Distribution Center at the time of Hughes request. The petitioner was requesting the same thing, but was denied each time. The postal service processing of the petitioner's noncompetitive request differed sharply from its handling of the nearly identically situated Dunlap, Hughes, Zyvert and Nalewanski.

Oncale v. Sundowner Offshore Service, Inc., 118 S. Ct. 998, 1002 (1998) ("The critical issue, Title VII's test indicates, is whether members of one sex (race or color) are exposed to disadvantageous terms or

EDITOR'S NOTE

ORIGINAL PAGINATION IS NOT CONTINUOUS

conditions of employment to which members of the other sex (race or color) are not exposed.") (quoting *Harris v. Forklift Systems, Inc.*, 510 U. S. 17, 25 (1993) (Ginsburg J., concurring)

The District Court's Opinion conflicts with what this Court has stated in settled case laws precedent and with other Circuits. *Furnco Construction Corp., v. Waters*, 438 U. S. 567, 577 (1978); *Teamsters v. United States* 431, U.S. 324, 335, n. (1977); *U.S. Postal Service Bd. of Governors v. Aikens*, 460 U.S. 711, 713-714 (1983); *St. Mary's Honor Center v. Hicks* 509 U.S. 502 (1993); *Texas Dept. of Community Affairs v. Burdine*, 450 U. S. 248 (1982); *McDonnell Douglas v. Green*, 411 U. S. 792 (1973).

In *Reeves v. Sanderson Plumbing Products*, 500__(2000), the Supreme Court held that proof of pretext provides an adequate evidentiary basis for a finding of discriminatory motive. The circuits that require independent proof of discrimination beyond evidence of pretext at the summary judgment stage are imposing an unwarranted burden of plaintiffs and are misconstruing the requirements of Rule 56. (petitioner's Seconded-Amended Complaint and her response brief, which the District Court considered at the time of the Opinion, footnote #3, page 5 of the December 19, 2001 Opinion)

The District Court did not review all of the evidence in the record, nor did it draw all reasonable inferences in the petitioner's favor. This conflicts with this Court's settled case law precedent.

The standard for judgment as a matter of law under Rule 50 mirrors the standard for summary judgment under Rule 56. Thus, the court must review all of the

evidence in the record, cf, e.g., *Matsushia Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587. Drawing all reasonable inferences in favor of the nonmoving party, but making no credibility determination or weighing any evidence, e.g. *Lytle v. Household Mfg., Inc.*, 494 U. S. 545, 554-555.

The District Court granting the Respondent's motion for summary judgment and the Court of Appeals affirming it, conflicts with decisions of from this Court and other Circuits. *Texas Dept. of community Affairs v. Burdine*, 450 U.S. 248 (1981); *Postal Service Bd. of Governors v. Aikens*, 460 U.S. 711, 713, 714, n. 2 (1983); *McDonnell Douglas v. Green* 411 U.S. 792 (1973); *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 577 (1978); *Reeves v. Sanderson Plumbing Products*, 500 U.S. __(2000); *St Mary's Honor Center v. Hicks*, 113, S. Ct. 2724, 2749 (1993).

This Court stated in settled case law precedent (quoting *St. Mary's Honor Center v. Hicks)* ("At the outset, under the *McDonnell Douglas* framework, a plaintiff alleging disparate treatment in the workplace in violation of Title VII must provide the basis for an inference of discrimination. In this case, as all agree, Melvin Hicks met this initial burden by proving by a preponderance of the evidence that he was black, and therefore a member of a protected class; he was qualified to be a shift commander; he was demoted and then terminated; and his position remained available and was later filled by a qualified applicant. See 970 F. 2d 487, 491, and n. 7 (CA 8 1992).

This Court stated in *Aikens*, the "factual inquiry" in a Title VII case is "whether the defendant intentionally discriminated against the plaintiff." *Burdine*, supra, at 253. In other words, is "the employer treating some

people less favorably than others because of their race, color, religion, sex or national origin." *Furnco* Construction Corp. v. Waters, 438 U.S. 567, 577 (quoting) Teamsters v. United States, 431 U.S. 324, 355, n. 15 (1977). (Petitioner's appeals brief, pages 1 and 2)

Based on the record as a whole, the Respondent's treatment of the Petitioner and the White employees requesting a noncompetitive lateral reassignment, approving each of the White employees request and denying the Petitioner constitute disparate treatment.
Standing alone, the United States Postal Service's different treatment of the Petitioner and the White supervisors offers a sufficient basis to reverse the District Court's and the Court of Appeals decisions.

The Petitioner asserts that by framing the case as focusing solely on the plant manager's conclusory assertion, "he never hires noncompetitive lateral reassignments" and the postmaster's "no vacancies", the District Court and the Court of Appeals have skipped over her central complaint—-that when she and the White employees all requested *noncompetitive lateral reassignments"*, the Respondent solicitously made every effort to ensure that the White employees request would not be derailed, while it discouraged her from continuing with the process. Petitioner believes that this constitutes disparate treatment of similarly situated employees, and made out a prima facie case of discrimination under Title VII.

The Court of Appeals correctly stated the respondent did not argue on appeal the Bell failed to establish a prima facie case. The Court of Appeals focus on the reasons for the rejection of petitioner's application. This Court said in *St. Mary's Honor Center v. Hicks,*

"Under *McDonnell Douglas and Burdine,* there would be no reason in this situation to question discriminatory intent. The plaintiff has raised an inference of discrimination (though not longer a presumption) through proof of his prima facie case, and we noted in *Burdine,* this circumstantial proof of discrimination can also be used by the plaintiff to show pretext. 450 U.S., at 255, n. 10. Such proof is merely strengthened by showing, through use of further evidence, that the employer's articulated reasons are false, since "common experience: tells us that it is "more likely than not" that the employer who lies is simply trying to cover up the illegality alleged by the plaintiff. "*Furnco,* 438 U.S., at 577. In *Burdine,* this Court stated "even after the employer meets the plaintiff's prima facie case" and the "inferences properly drawn there from may be considered by the trier of fact on the issue of whether the [employer's] explanation is pretextual." 450 U. S. at 255, n. 10.

As a result of this conflict, the relief available to the petitioner depends on the Supreme Courts superior power to resolve the conflict described in this case and the settled case law precedent from this Court. The conflict in the lower courts is squarely presented by this case, and further review is therefore warranted.

1. The District Court held that the nonmoving party's response to the moving party's statement of facts has been stricken because of noncompliance with LR 56.1, thecour departs from its usual posture of construing all facts in favor of the nonmoving part; rather, accept as true all material facts contained in the moving party's LR 56.1 (a). (quoting) Thus, the court must review all of the evidence in the record, cf,

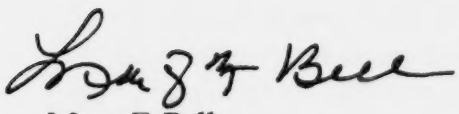
2. e.g., *Matsushia Elec. Industrial Co., v. Zenith Radio Corp.*, 475 U. S.S 574, 587.

The Respondent's were not entitled to a summary judgment motion, as a matter of law, because the petitioner's alleged disparate treatment in her Second-Amended Complaint and provided a basis for an inference of discrimination. A) she made out a prima facie case of discrimination, that she is an African-American, she was qualified and made a noncompetitive request for the positions, she was denied the positions, the positions remained open and filled by white employees, white employees request for noncompetitive laterals were approved. B) she provided sufficient evidence the respondent's nondiscriminatory reasons were false, sworn testimony from witnesses and false statements from the alleged responsible officials, McMahon and Calloway. *St. Mary's Honor Center v. Hicks* (1993) *Reeves v. Sanderson Pumbing Products, 500* __ (2000).

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully submitted.



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APPENDIX A

UNITED STATES COURT OF APPEALS FOR
THE SEVENTH CIRCUIT

No. 02 - 1237
MARY F. BELL, PLAINTIFF, APPELLANT

v.

JOHN E. POTTER, DEFENDANT, APPELLEE

Submitted November 20, 2002
Decided November 21, 2002

Before COFFEY, EASTERBROOK AND MANION, Circuit Judges, and REINHARD, United States District Judge for the Northern District of Illinois, sitting by designation.

Affirmed by unpublished Opinion. Ten copies provided.

APPENDIX B

IN THE UNIED STATES DISTRICT COURT FOR
THE NORTHER ILLINOIS DISTRICT
WESTERN DIVISION

Civil Action No. 00 - C - 50014

MARY F. BELL, PLAINTIFF

v.

JOHN E. POTTER, DEFENDANT

Filed: August 2001
Decided: December 19, 2001

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

Plaintiff, Mary F. Bell, proceeding pro se, has filed a second-amended complaint against defendant, John E. Potter, Postmaster General of the United States ("Postmaster General"). She alleges various instances of discrimination based on her race (African-American), color (black), and sex (female), and retaliation, all in violation of Title VII of the Civil Rights Act of 1964, 42 U. S. C. sections 2000e-3, 2000e-16 ("Title VII"). Jurisdiction and venue are proper in this district and division. See id. section 2000e-16 (c), 2000e-5 (f) (3). Before the court are the Postmaster's General's motion for summary

judgment, filed under Rule 56, and his motion to strike Bell's response to the summaryBell's response to the summary

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1 John E. Potter has succeeded William Henderson, the original defendant in this case, as Postmaster General, and is, therefore, automatically substituted as the named defendant, pursuant to Federal Rule of Civil Procedure 25 (d) (1).

Judgment motion as not complying with Local Rule ("LR") 56.1.

I. ANALYSIS

A. Motion to Strike

Taking the latter motion first, the court agrees Bell's response to the Postmaster General's motion for summary judgment should be stricken. First, Bell did not file an accompanying memorandum in support of her response. See N. D. Ill. R. 56.1 (b) in numerous respects. Second, and more critically, both both her response to the Postmaster General's LR 56.1 (a) statement of facts and her separate statement of additional facts fail to comply with LR 56.1 (b) in numerous respects. To begin with, many of the paragraphs in these statements are filled with improper argument, self-serving and unsupported legal conclusions, and long and rambling narratives rather than particularized statements of facts, most of which are not even responsive to the Postmaster General's facts. In addition, Bell does not offer citations to the record for a good number of her factual assertions. And when she does, the evidence she points to almost invariably does not support the assertion made. At other times, Bell makes it nearly impossible for the court to even verify she has accurately cited the record by referring either to deposition in general, without providing specific

page numbers, or to an exhibit with no way to find it in her 206-page appendix. See Greer v. Board of

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2. Although Bell had the right idea to consecutively paginate the exhibits in her appendix, for some reason she rarely

Educ. of the City of Chicago, Ill., 267 F. 3d 723, 727 (7th Cir. 2001) ("[A] lawsuit is not a game of hunt the peanut. Employment discrimination cases are extremely fact-intensive, and neither appellate courts nor district courts are 'obliged in our adversary system to scour the record looking for factual disputes.'") (citation omitted); Brasic v. Heinemann's Inc., 121 F. 3d 281, 285 (7th Cir. 1997) (it in not district court's task to "scour the record in search of a genuine issue of triable fact" because court relies on nonmoving party to identify with "reasonable particularity the evidence that precludes summary judgment"; LR 56.1 requires "specific references to affidavits and parts of the record, not to entire affidavits") (emphasis in original).

The court recognizes some of these deficiencies could be easily cured and would normally be inclined to give the responsible party a change to do just that, but not in this case. Not only did the Postmaster General serve Bell with the required notice under LR 56.2, explaining her obligation to comply with LR 56.1, but he also enumerated for her in his motion to strike all of the above problems with her response to the summary judgment motion. Bell filed a response brief to the motion to strike, but rather than specifically rebut the charges made in that motion,

ever uses her own appendix page numbers when citing to a particular document. Further compounding these problems is that, according to the Postmaster General, Bell did not even produce some of the materials included in her appendix during discovery.

Bell simply states in summary fashion at the beginning of this brief that she "responded to each of the [Postmaster General's] 185 paragraphs and providing supporting documentation from the record. . . ." She then proceeds to use the bulk of her brief in response to the motion to strike as an opportunity to respond to the merits of the motion for summary judgment. Because Bell has already been given one chance to fix her statements of facts, but chose not to, the court will not give her another, especially when she has expressed no willingness to do so. Cf. Bordelon v. Chicago Sch. Reform Bd. of Trs., 233 F. 3d 524, 529 (7th Cir. 2000) (court did not abuse discretion in refusing to allow plaintiff to use Rule 59 (e) motion to "undo" the shortcomings of his LR 56.1 (b) statement where plaintiff never sought leave to amend the statement, even after the defendant moved to strike it).

True, Bell is acting pro se, but this in itself is no excuse for not complying with LR 56.1. See Greer, 267 F. 3d 723, 727 (7th Cir. 2001) (where pro se plaintiff's response to motion for summary judgment "miserably failed to comply with Local Rule 56.1," it would be within district court's discretion "to grant the [defendant's] motion for summary judgment on this basis alone"); see also Members v. Paige, 140 F. 3d 699, 702 (7th Cir. 1998) (procedural rules "apply to uncounseled litigants and must be enforced"). For the reasons stated above, the court grants the Postmaster General's motion to strike. Bell's response to the motion for summary judgment is stricken in its

entirety, including her response to the Postmaster General's statement of facts, her own statement of material facts, and all exhibits attached thereto. See Bordelon, 233 F. 3d at 527-29 (it is within district court's discretion to strictly enforce LR 56.1 and strike entire statement of facts, rather than offending material).

A. **Motion for Summary Judgment**

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56 (c); Chavez v. Illinois State Police, 251 F. 3d 612, 635 (7th Cir. 2001). Where, as here, the nonmoving party's response to the moving party's statement of facts has been sticken because of noncompliance with LR 56.1, the court departs from is usual posture of construing all facts in favor of the nonmoving party; rather it accepts as true all material facts contained in the moving party's LR 56.1 (a) statement. Brasic, 121 F. 3d at 284; see also N. D. Ill. R. 56.1 (b) (3) (B). As a result, the court accepts as true all material facts in the Postmaster General's LR 56.1 (a) statement

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3 Nevertheless, the court will still consider Bell's brief in response to the motion to strike, if only to glean her legal arguments.

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of facts that are supported by citations to the record and will not consider Bell's statement of additional facts. See Brasic, 121 F. 3d at 284.

Bell has a seventeen-year career with the U.S. Postal Service ("USPS") and, since April 1997, she has worked as a grade level EAS-16 Supervisor of Distribution Operations at the USPS's Processing and Distribution Center in Palatine, Illinois. (LR 56.1 (a) Par. 7, 16) Ever since then, for cost of living reasons, Bell has unsuccessfully tried to be placed in a position in the Rockford area, either by way of a "noncompetitive lateral transfer" to a same grade position or a promotion to a higher grade position. In her second amended complaint, Bell claims she was unlawfully denied some thirteen different positions because of her sex, race, and color, and in retaliation for prior complaints and lawsuits she has filed against the Postmaster General.

1. **Administrative Exhaustion**

The Postmaster General initially argues it is entitled to summary judgment on the vast majority of these claims because Bell failed to exhaust her administrative remedies on all but two of them. The court has some reservations about this argument. It appears from the documents attached to Bell's second amended complaint that the USPS's Equal Employment Opportunity ("EEO") Office included in its administrative investigation almost all thirteen positions. Thus, even though Bell mentioned only two positions in her formal complaint of discrimination with the USPS's EEO Office, most of the remaining positions not only "reasonably could have developed from [the USPS's] investigation of the charges before it," Cable v. Tech State College, 200 F. 3d 467, 477 (7th Cir. 1999), but they were in fact part of its investigation. So the Postmaster General certainly cannot argue he did not have notice of these additional claims. Moreover, to the extent Bell argues she was denied all of these other positions in

retaliation for filing her prior complaints of discrimination and previous lawsuit, administrative exhaustion may not even be necessary. See e.g., McKenzie v. Illinois Dep't of Transp., 92 F. 3d 473, 482 - 83 (7th Cir. 1996); Malhotra v. Cotter & Co., 885 F. 2d 1304, 1312 (7th Cir. 1989). In any event, the court need not ultimately decide whether Bell should have, or did, exhaust her administrative remedies, as it believes her claims falter on other grounds.

2. **Disparate Treatment**

Because there is no direct evidence of discrimination in this case, the court will analyze Bell's claims that the USPS refused to promote or transfer her because of her race, color, and sex under the familiar McDonnell Douglas burden-shifting method. This requires Bell first to establish a prima facie case of discrimination by showing that: (1) she is a member of protected class; (2) she was qualified for the position sought; (3) she was rejected for the position sought; and (4) the individual promoted or transferred to the position was not better qualified than her. See Johnson v. Nordstrom, Inc., 260 F. 3d 727, 732 (7th Cir. 2001). Satisfying these elements shifts the burden to the Postmaster General to articulate a legitimate, nondiscriminatory reason for the adverse employment actions. If he meets this burden, then Bell has the burden to show the stated reason is pretextual. See Curry v. Menard, Inc., 270 F. 3d 473, 477 (7th Cir. 2001).

Bell's chief argument focuses on the denial of three requests she made for a "noncompetitive lateral transfer" - a procedure by which a supervisor- level employee at the USPS can transfer to another position at the same pay grade without having to compete against other employees. She made her first

two together in a letter dated November 13, 1997, seeking a noncompetitive lateral transfer to either of two open EAS-16 positions in Rockford (Supervisor of Distribution Operations and Supervisor of Maintenance Operations). (LR 56.1(a) Par. 40) The letter was addressed to the Rockford plaint manager, Wayne McMahon. (id.) A few days later, McMahon wrote back to Bell, denying her transfer request and explaining that if she wanted to be considered for the positions, she should apply competitively. (Id. Par. 41, 50) After receiving McMahon's letter, Bell took no further action with respect to these two positions. (Id. Par. 52)

Jumping ahead to the issue of pretext, see Johnson, 260 F. 3d at 732, the Postmaster General's stated reason for not awarding these two positions to Bell was that she did not apply for them competitively. McMahon testified during his deposition that he requires all applicants to apply competitively for open positions and it is his general policy to not grant noncompetitive lateral transfer requests. (LR 56.1 (a) Par. 43) In fact, he has never agreed to hire laterals on a noncompetitive basis and could not recall ever granting such a request from a supervisor. (Id. Par. 43, 45) Although Bell does not seem to take issue with McMahon's policy of requiring everybody to apply competitively and does not suggest the postal regulations require him to grant a noncompetitive lateral transfer request, she does claim McMahon's explanation is a pretext because she did in fact apply competitively.

A supervisor such as Bell who requests a noncompetitive lateral transfer must submit the first two pages of an application form ("Form 991") and a letter explaining why she wants to be considered noncompetitively. (Id. Par. 28) To apply

competitively, though, an employee must submit the entire Form 991, including statements addressing each "KSA" (knowledge, skill and ability) for the job. (Id. Par. 30 - 31) When Bell wrote to McMahon on November 13, 1997, she included only the first two pages of her Form 991. (Id. Par. 40) Thus, while Bell submitted a complete noncompetitive application, she did not submit a complete competitive application. Nevertheless, Bell claims the postal reulations required McMahon to forward her noncompetitive application for consideration in the competitive application process. McMahon, on the other hand, testified that he was not aware of any policy requiring him to do so. (Id. Par. 49)

Although Bell has pointed to some regulations setting out how the noncompetitive selection process works, the court has found nothing that would exempt her from submitting a complete competitive application. More importantly, there is absolutely no evidence to contradict McMahon's honestly held belief that he was not required to forward a request for a noncompetitive lateral transfer onto competitive consideration when that request did not include a completed Form 991 and the necessary "KSA's". See Johnson, 260 F. 3d at 733. Had McMahon ever done so in the past, or had Bell included a completed Form 991 and "KSA's" with her request for a noncompetitive lateral transfer, McMahon's failure to forward her request for competitive consideration might have raised some suspicion. But because there is no evidence either of these are the case, Bell cannot establish the stated reason for not awarding her these two positions is a pretext.

Bell made her third request for a noncompetitive lateral transfer on May 12, 1998, when she wrote to Postmaster Ronald Calloway and asked if she could be transferred to Supervisor of Customer Services.

(LR 56.1 (a) Par. 131) Calloway replied that there were currently no positions available in Rockford and recommended that she apply competitively should one open up. (Id. Par. 132) Unlike McMahon, Calloway has granted noncompetitive lateral transfer request in the past. (Id. Par. 140) Initially, though, Calloway denies all such requests and encourages applicants to apply competitively because "laterals are not a guarantee." (Id. Par. 141) On May 27, 1998, the Supervisor of Customer Services position at the Loves Park branch was posted as a vacant. Bell did not apply competitively for the position. (Id. Par. 127, 128)

Bell first argues the Loves Park position was vacant when she first wrote Calloway on May 12, 1998, and Calloway knew it was. However, Bell has only her unsupported speculation to back up this allegation. But even assuming Calloway knew the position might be opening up soon Bell knew Calloway preferred competitive applications and still did not send him one after the vacancy was officially posted on May 27, 1998. And, once again, Bell cannot rebut as pretexual Calloway's stated policy of requiring a competitive application before considering a noncompetitive lateral transfer.

Instead, Bell claims the "noncompetitive lateral policy" was applied to her in a discriminatory and retaliatory manner by singling her out and giving white employees their requested lateral transfer but not her. The problem with this argument is that the two employees she points to as receiving better treatment than her under the noncompetitive lateral policy (and that the court can locate in the record) - Phil Dunlap and Diane Hughes - were not similarly situated to Bell. Diane Hughes was temporarily detailed to an EAS-15 position - a lower-grade position the her previous one. (Id. Par. 78) While

detailed to the EAS-15 position, Hughes requested a permanent noncompetitive downgrade, which Calloway subsequently granted. (Id. Par. 79) Thus, unlike Bell, Hughes was already working in the position she was asking to be downgraded to. Phil Dunlap, it is true, received a noncompetitive lateral transfer from Calloway, but only after Dunlap applied for the position competitively, as Calloway instructed. (Id. Par. 144). In short, the only evidence before the court indicates Calloway has consistently applied his policy of requiring a competitive application before granting a noncompetitive lateral transfer and did not use it as a pretext to deny Bell her transfer requests because of her race, color, or sex.

For all of the remaining positions, Bell applied competitively but was not selected. In light of the court striking Bell's response to the Postmaster General's motion for summary judgment, however, there is simply no evidence to dispute that the individuals who were selected instead of Bell were better qualified than her and, for that matter, no other evidence indicating Bell was discriminated against. See Brasic, 121 F. 3d at 286 (summary judgment properly entered where "the nonmovant has failed to submit a factual statement in the form called for by pertinent rule and thereby conceded the movant's version of the facts") (citations and internal quotations omitted).

3. **Retaliation**

Again lacking any direct evidence of a retaliatory intent, Bell is left with the McDonnell Douglas burden-shifting method to prove she was retaliated against for filing her previous administrative complaints and lawsuit. To state a prima facie case of retaliation under Title VII, Bell must show: (1) she

engaged in statutorily protected activity; (2) she suffered an adverse employment action; and (3) a causal connection exists between her protected activity and the adverse action. See Lalvani v. Cook County, Ill., 269 F.3d 785, 790 (7th Cir. 2001). If Bell is able to make out a prima facie case, the Postmaster General must articulate a legitimate business reason for the adverse employment action. If he does so, Bell must then present evidence that the proffered explanation is pretextual. See id.

Based on the record before the court, Bell's claims of retaliation are necessarily limited to those involving plant manager because he is the only one who had any knowledge of Bell's previous protected activities. (LR 56.1 (a) Par. 58-60) Maarouf v. Walker Mfg. Co., 210 F. 3d 750, 755 (7th Cir. 2000)

Calloway affirmatively testified he did not know of Bell's prior protected activities (LR 56.1 (a) Par. 67) and no mention is made one way or the other as to any other postal officials who might have had some input into selecting or not selecting Bell.

(plaintiff cannot establish causal link between adverse employment action and protected activity if there is no evidence decision-maker was aware of the protected activity). The most arguably recent of these activities was an agreement Bell entered into with the Postmaster General in March 1997 to settle a law suit a lawsuit in which she alleged the Postmaster General had discriminated and retaliated against her, in violation of Title VII. However, Bell's first contact with McMahon after signing the settlement agreement, so far as the court can tell, was when McMahon denied Bell's request for a noncompetitive

lateral transfer in November 1997. This temporal gap of approximately eight months is too tenuous by itself to establish the necessary causal link. See, e.g., Davidson v. Midelfort Clinic, Ltd., 133 F. 3d 499, 511 (7th Cir. 1998) (five months between protected activity and adverse employment action too long). In the absence of any additional proof of a causal nexus, Bell cannot satisfy the third element of her prima facie case. See id. And even assuming Bell presented sufficient evidence to prove her prima facie case, she has failed, as discussed above, to show McMahon's stated reason for not granting her transfer request - that she did not apply competitively - was a pretext.

I. CONCLUSION

For the reasons stated above, the Postmaster General's motions to strike and for summary judgment are granted. This case is hereby dismissed in its entirety with prejudice.

/s/ PHILIP G. REINHARD
PHILIP G. REINHARD
DISTRICT JUDGE

Rockford, Illinois
December 19, 2001

AMENDED APPENDIX A
UNITED STATES COURT OF APPEALS FOR
THE SEVENTH CIRUIT

No. 02 - 1237

MARY F. BELL, PLAINTIFF-APPELLANT

v.

JOHN E. POTTER, DEFENDANT - APPELLEE

Submitted November 20, 2002
Decided November 21, 2002

Before COFFEY, EASTERBROOK and MANION, Circuit Judges, and REINHARD, United States District Judge for the Northern District of Illinois, sitting by designation.

Affirmed by unpublished Opinion.

ORDER

Mary F. Bell, sued her employer, the United States Postal Service, under Title VII of the Civil Rights Act of 1964, alleging that the Postal Service discriminated against her on account of her race and sex and retaliated against her because of her past discrimination complaints. The Postal Service moved for summary judgment, and after striking

Bell's response, the district court granted the motion. Bell appeals, and we affirm.

After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34 (a) (2).

Bell, who is African - American, began working for the Postal Service in 1984 as a clerk at the Rockford, Illinois, processing and distribution center. In 1987 and again in 1990, Bell filed informal complaints charging that postal officials, including the "plant manager" of the Rockford facility, would not promote her because of her race. Then after Bell transferred to a processing and distribution center in Memphis, Tennessee, she initiated a lawsuit complaining about the discrimination. Bell and the Postal Service agreed to settle the case in 1997, and as part of that agreement Bell was promoted to supervisor and transferred to a processing and distribution center in Palatine, Illinois.

But Bell did not move to Palatine. Instead she returned to Rockford, and seeking to eliminate her lengthy commute between the two cities, Bell began applying for positions in her home town - without success. So after exhausting her administrative remedies, Bell brought this action in January 2000, complaining that the Postal Service had refused to transfer her to thirteen different positions in Rockford because of her race and sex and because of the earlier lawsuit that she filed.

The Postal Service moved for summary judgment and also moved to strike Bell's response to its motion

because the response did not comply with Northern District of Illinois Local Rule 56.1. The district court agreed, observing that Bell had not filed a memorandum of law and that her response to the Postal Service's statement of facts contained argument, advanced legal conclusions, omitted record citations, inaccurately characterized the record, and generally consisted of "long rambling narratives" rather than the concise responses required by the rule. The court then granted summary judgment based upon the Postal Service's statement of undisputed facts.

On appeal Bell first argues that it was improper to strike her response. District courts have discretion, however, to enforce their local rules (and to excuse transgressions), e.g., *Little v. Cox's supermarkets*, 71 F. 3d 637, 641 (7th Cir. 1995), and the Supreme Court has made clear that in ordinary civil litigation even pro se litigants must follow procedural rules, see *McNeil v. United States*, 508 U. S. 106, 113 (193). Given the quality of Bell's response and the fact-intensive nature of employment discrimination cases, the district court did not act outside its discretion here. See, e. g. *Greer v. Bd. of Educ.*, 267 F. 3d 723, 727 (7th Cir. 2001).

Because the district court struck Bell's response, we take the facts as the Postal Service presented them. See *Jupiter Aluminum Corp. v. Home Ins. Co.*, 225 F. 3d 868, 870 - 71 (7th Cir. 2000). In the district court Bell did not present evidence of intentional discrimination or retaliation. She instead proceeded under the approach established in *McDonnell Douglas v. Green*, 411 U. S. 792 (1973). With respect to her discrimination claim, the Postal Service does not argue on appeal that Bell failed to establish a prima facie case, so we focus on whether Bell demonstrated a material dispute about the legitimacy of the reasons given for rejecting her applications. See *Jordan v. Summers*, 205 F. 3d 337, 342- 43 (7th Cir. 2000). The Postal Service's reasons depend on how Bell applied for the jobs. For positions that Bell applied for

"competitively," that is by agreeing to compete with other applicants for an open spot, Bell did not receive an offer because in each case the job went to a better qualified candidate. For those positions that Bell applied for "noncompetitively," where she refused to compete with other applicants, she was rejected twice by the plant manager because he never hires noncompetitive applicants and once by the Rockford postmaster because no positions were available wen Bell applied.

Nothing in Bell's submissions suggests that these reasons are false. With respect to her competitive application, Bell does not argue that she had better qualifications than any of the successful applicants; indeed, in her appellate brief Bell does not even identify the other competitive candidates or discuss their qualifications in relation to her own. Likewise, with respect to her noncompetitive applications, Bell points to no evidence that the plant manager actually did not have a policy to reject noncompetitive applications or that her ever approved a noncompetitive transfer. And Bell similarly has not shown that a position in fact existed when the postmaster told her that no position was available.

Bell's appellate brief covers a number of other topics, but she never grapples with the basis for the Postal Service's summary judgment motion. For example, Bell contends that the plant manager violated operating procedures by refusing ever to consider noncompetitive applications and by failing to forward her noncompetitive applications for competitive consideration. Yet even if the plant manager did violate internal procedures- and the materials cited by Bell do no show that he did- that does not cast doubt on the honesty of his explanation. See *O'Connor v. DePaul Univ.*, 123 F. 3d 665, 670 (7th Cir. 1997). Bell also observes that the postmaster, unlike the plant manager, in the past had granted noncompetitive transfers to several white employees. That observation likewise adds nothing,

however, because it is assumed as part of Bell's prima facie case that she was treated unequally. See *Rummery v. Ill. Bell Tel. Co.*, 250 F. 3d 553, 557 (7th Cir. 2001). And in any event, Bell's point does not suggest that the postmaster lied when he said that no positions were available at the time that she applied.

Bell makes other arguments as well. She discusses what she perceives as inaccuracies in the affidavits filed by the plant manager and postmaster, working conditions at Rockford post offices, and the number of female African-American supervisors recently employed in Rockford (zero). But these points are all equally irrelevant to the pretext question, and it is unnecessary to discuss them. Because Bell has not raised a genuine issue whether the legitimate reasons for rejecting her applications were untrue, the district court properly granted summary judgment on her discrimination and retaliation claims.

AFFIRMED.